

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:06CR128
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
VERNER D. WEAVER,)	
)	
Defendant.)	

The Court has received the Presentence Investigation Report ("PSR") in this case. The parties have not objected to the PSR.¹ See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The Defendant moves for downward departure based on overstatement of criminal history pursuant to U.S.S.G. § 4A1.3 and the state of his mental or emotional condition pursuant to U.S.S.G. § 5H1.3 or 18 U.S.C. § 3553(a). The motion will be heard at sentencing. However, the Court is not inclined to depart downward on the basis of overstatement of criminal history. The Defendant's criminal history reveals a steady and frequent progression of offenses since age 11.

IT IS ORDERED:

1. The parties are notified that my tentative findings are that the PSR is correct in all respects;

¹Although the Defendant captioned his statement of position to include an "objection," the pleading is not an objection but rather a motion for downward departure. (Filing No. 42.)

2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 2 of this Order, my tentative findings may become final;

4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and

5. The Defendant's motion for downward departure (Filing No. 42) will be heard at sentencing.

DATED this 11th day of December, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge